

ROADS AND BRIDGES:
ROAD DISTRICTS:
SPECIAL ROAD DISTRICTS:

A commissioner of a special road district may not be employed as a laborer for the road district.

OPINION NO. 287

October 7, 1969

Honorable William S. Brandom
Prosecuting Attorney
Clay County
Liberty, Missouri 64068



Dear Mr. Brandom:

This is in answer to your request for an official opinion of this office concerning the question whether a commissioner of a special road district may be employed as a laborer for the road district.

The Missouri Supreme Court has elaborated on the compatibility of the same person holding two different offices simultaneously. In State ex rel. Walker v. Bus, 135 Mo. 325, 36 S. W. 636, at 639, the Court states the general rule:

" * * * At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the two, - - some conflict in the duties required of the officers, as where one has some supervision of the others, is required to deal with, control or assist him. * * * " (Emphasis added)

You informed us that the special road district is one provided for in §§ 233.170 through 233.315, RSMo 1959. §233.180, RSMo 1959 provides for three commissioners to be appointed by the county court. §233.190, RSMo 1959 sets out the powers and duties of the commissioners and reads in part as follows:

"2. Said commissioners shall have sole, exclu-

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sive and entire control and jurisdiction over all public highways, bridges and culverts within the district, to construct, improve and repair such highways, bridges and culverts, and shall have all the power, rights and authority conferred by law upon road overseers, and shall at all times keep such roads, bridges and culverts in as good condition as the means at their command will permit, and for such purpose may employ hands and teams at such compensation as they shall agree upon; rent, lease, or buy teams, implements, tools and machinery; all kinds of motor power, and all things needed to carry on such work; provided, that said commissioners may have such road work, or bridge or culvert work, or any part thereof, done by contract, under such regulations as said commissioners may prescribe."
(Emphasis added)

It is our opinion that the two positions are incompatible because a commissioner of a special road district clearly has supervision over a laborer of the district, in violation of the rule set out in the Walker case.

Furthermore, §233.270, RSMo 1959, which provides for contracts for improvement, specifically prohibits such employment in subsection 2 which reads as follows:

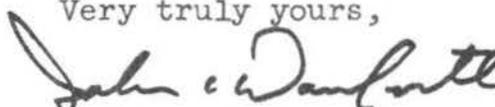
"2. Said commissioners may advertise for bids for such contract in any manner they may choose; and the contract shall in no case be let to any commissioner, nor shall any commissioner (sic), directly or indirectly, have any pecuniary interest therein other than the performance of his official duties as herein required."

CONCLUSION

It is the opinion of this office that a commissioner of a special road district may not be employed as a laborer for the road district.

The foregoing opinion, which I hereby approve, was prepared by my assistant Walter W. Nowotny, Jr.

Very truly yours,



JOHN C. DANFORTH
Attorney General